

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ALEXANDER NUNGARAY,

Plaintiff,

v.

WALMART STORES TEXAS, LLC,

Defendant.

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Civil Action No.: 3:19-CV-00306

WALMART STORES TEXAS, LLC’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WALMART STORES TEXAS, LLC (“Walmart”) and files it’s Notice of Removal pursuant to 28 U.S.C. § 1441 based on diversity of citizenship jurisdiction, and in support of the same, would respectfully show the Court as follows:

**I.
BACKGROUND**

1. Plaintiff’s Original Petition was filed in state court and assigned to the 168th Judicial District Court, El Paso County, under Cause No. 2019DCV3248.¹

2. Plaintiff asserts a state law claim for premises liability, alleging that she “while upon Defendant’s premises, he suffered bodily injuries as a direct result of the fall proximately caused by a dangerous condition, which Defendant knew, or in the exercise of ordinary care, should have known existed.”² Furthermore, Plaintiff asserts a claim for negligence, alleging that “Defendant owed a duty to Plaintiff, that Defendant breached that duty and that such breach was

¹ See Ex. A, Plaintiff’s Original Petition.

² *Id.* at Section IV.

a proximate cause of the injury and resulting damages of Plaintiff.” Plaintiff goes on to allege ten ways in which he contends that Walmart was negligent.³

3. Written notice of removal has been given to Plaintiff and the state court clerk.

4. Plaintiff seeks over \$75,000.⁴

5. Service occurred less than thirty days ago.⁵ Accordingly, removal is timely under 28 U.S.C. § 1446.

6. The El Paso Division of the Western District of Texas embraces the place where the state case was pending; thus, venue is proper under 28 U.S.C. §§ 1441(a) and 124(d)(3).

7. Walmart answered in state court⁶ and reserves the right to plead further as permitted.

8. All documents filed in state court are attached as Exhibit A.

II. BASIS FOR REMOVAL

9. This case is being removed based on diversity of citizenship jurisdiction under 28 U.S.C. § 1441(b).

A. Plaintiff and Defendant Walmart Stores Texas, LLC are completely diverse parties

10. Plaintiff is a Texas citizen.⁷

11. On the contrary, Defendant Walmart Stores Texas, LLC is not a Texas citizen. That is, Walmart Stores Texas, LLC is a limited liability company which was formed under the laws of

³ *Id.* Ex. A., Plaintiff’s Original Petition at Section V.

⁴ *Id.* Ex. A., Plaintiff’s Original Petition at Section IX (Plaintiff seeks “over \$200,000.00”).

⁵ *See* Ex. B, CT Corporation Service Document (service occurred on September 23, 2019).

⁶ *See* Ex. A, Walmart Stores Texas, LLC’s Answer.

⁷ Ex. A, Plaintiff’s Original Petition Section II (“Plaintiff is a resident of El Paso County, Texas”).

the State of Delaware and whose principal place of business is in Bentonville, Arkansas. Wal-Mart Real Estate Business Trust is the sole member of Walmart Stores Texas, LLC. Wal-Mart Property Co. is the sole unit holder of Wal-Mart Real Estate Business Trust. Wal-Mart Stores East, LP is the sole owner of Wal-Mart Property Co. Wal-Mart Stores East, LP is a limited partnership which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. WSE Management, LLC is the sole general partner, and WSE Investment, LLC is the sole limited partner, of Wal-Mart Stores East, LP. WSE Management, LLC and WSE Investment, LLC are both limited liability companies which were formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. Wal-Mart Stores East, LLC is a limited liability company whose principal place of business is in Bentonville, Arkansas. Wal-Mart Stores, Inc. (i.e., Walmart Inc.) is the sole member of Wal-Mart Stores East, LLC. Wal-Mart Stores, Inc. (i.e., Walmart Inc.) is a corporation which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas.⁸

12. Thus, the parties are completely diverse.

B. The amount in controversy is satisfied, because Plaintiff seeks damage over \$75,000.00

13. For a diversity case to be removable, the amount in controversy must exceed \$75,000.⁹ Plaintiff seeks over \$200,000.¹⁰ Accordingly, the amount in controversy requirement of 28 U.S.C. 1332(a) is satisfied.

⁸ Ex. C, Affidavit of Edwards. *See also Marquez v. Walmart*, No. 3:18-CV-00302, n. 1 and accompanying main text (W.D. Tex. Jan. 8, 2019) (finding that Walmart Stores Texas, LLC is a citizen of states other than Texas).

⁹ *See* 28 U.S.C. §§ 1441 and 1332(a).

¹⁰ Ex. A, Plaintiff's Original Petition at Section IX (Plaintiff seeks "over \$200,000.00").

**III.
JURY DEMAND**

13. Walmart asked for a state court jury trial and asks for a jury trial in this Court.

**IV.
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Walmart prays that this matter be placed on the Court's docket and for any other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

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SAFI, PAXSON & GALATZAN**
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By: /s/ Laura Enriquez

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CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure, I certify that on the 22ND day of October, 2019, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Daisy Chaparro
Flores, Tawney & Acosta P.C.
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El Paso, Texas 79902
(915) 308-1000

/s/ Laura Enriquez
Laura Enriquez